

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 05-O-02849-RMT; 05-O-03107;</b>
	)	<b>05-O-03181</b>
<b>DARNEL A. PARKER,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 135739,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Darnel A. Parker** is charged with multiple acts of professional misconduct in three separate matters, including (1) engaging in the unauthorized practice of law; (2) failing to obey court orders; (3) failing to cooperate with the State Bar; and (4) charging and collecting an illegal fee.

For the reasons set forth below, the court finds, by clear and convincing evidence, that respondent is culpable of seven of the ten alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

**II. Pertinent Procedural History**

On September 9, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary Charges (NDC) on respondent by certified mail, return receipt requested, at his official membership records address (official address) under Business and Professions Code section 6002.<sup>1</sup> On September 19, 2005, the return receipt was received by the State Bar signed by a "Carol Heisz."

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<sup>1</sup>References to section are to the California Business and Professions Code, unless otherwise noted.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On October 12, 2005, the State Bar sent correspondence to respondent at his official address, advising respondent that his response to the NDC was overdue. The State Bar requested that respondent file his response within ten days of October 12, 2005. The State Bar's letter dated October 12, 2005, was not returned by the U.S. Postal Service. Respondent did not reply to the letter.

On December 7, 2005, the State Bar attempted to reach respondent by telephone at his official membership records telephone number. However, each time the State Bar received a busy signal. On that same date, the State Bar called directory assistance for the area which includes respondent's official address and asked for all telephone listings for the respondent. Directory assistance had no listings for respondent. The State Bar also checked Parker's Directory on December 7, 2005. However, it did not list any address of which the State Bar was not already aware.

On the State Bar's motion, respondent's default was entered on January 10, 2006, and respondent was enrolled as an inactive member on January 13, 2006, under section 6007, subdivision (e). An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on February 17, 2006, following the filing of the State Bar's brief on culpability and discipline.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on October 11, 1988, and has since been a member of the State Bar of California.

## **B. Background**

On May 25, 2005, the State Bar Court issued an order, effective May 28, 2005,<sup>2</sup> that respondent be enrolled as an inactive member under section 6007 for failure to file a timely response to the NDC that had been filed in State Bar Court case No. 04-O-11877.

On June 6, 2005, respondent filed a request with the State Bar Court to vacate the involuntary inactive enrollment, as well as a request to set aside the default. The requests were denied by court order on June 22, 2005. Respondent thereafter filed a motion for reconsideration of the June 22<sup>nd</sup> order and requested a stay of the involuntary inactive enrollment. The State Bar Court denied respondent's motion and request in its July 29, 2005 court order, which respondent received. Respondent has since remained not entitled to practice law in California.

## **C. The Hernandez Matter (Case No. 05-O-02849)**

On June 1, 2005, respondent appeared in court on behalf of his clients, the defendants, in *Rufina Ayon v. Maria Teresa Hernandez, Frank Carillo, et al.*, Riverside Superior Court Case No. INC 049991, before Superior Court Judge Lawrence W. Fry (Judge Fry).

On June 6, 2005, the State Bar opened an investigation pursuant to a complaint filed by Judge Fry against respondent (the Fry complaint). On July 1 and July 20, 2005, the State Bar wrote to respondent, requesting that he reply by July 29, 2005, in writing to specified allegations of misconduct in the Fry complaint being investigated by the State Bar. Although respondent received the July 1 and July 20, 2005 letters, he did not reply to the State Bar's letters, or otherwise communicate with the State Bar regarding the allegations in the Fry complaint.

### ***Count 1– Unauthorized Practice of Law (Bus. & Prof. Code, §§6068, Subd. (a), 6125, and 6126)***

Section 6068, subdivision (a), provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone

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<sup>2</sup>The NDC contains what appears to be a harmless typographical error. In paragraph one, line nine, it is alleged that on or about May 23, 2005, the State Bar Court issued an order that effective May 28, 2005, respondent be enrolled inactive. In fact the order was issued on May 25, 2005 (and became effective May 28, 2005).

other than an active attorney.

By clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125, and 6126. When he was enrolled as an inactive member under section 6007, effective since May 28, 2005, for failure to file a timely response to the NDC that had been filed in State Bar Court case No. 04-O-11877, respondent knew or should have known that he could not hold himself out as entitled to practice law or to practice law. Yet, he held himself out as entitled to practice law and actually practiced law by appearing before the Riverside Superior Court as the attorney of record for the defendants in the Hernandez matter on June 1, 2005.

***Count 2 – Failure to Obey a Court Order (Bus. & Prof. Code, §6103)***

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring [respondent] to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear” constitutes cause for disbarment or suspension. The uncontroverted evidence, as set forth in the NDC, establishes that respondent appeared in court after the effective date of his involuntary inactive enrollment. However, where an attorney has been found culpable of violating sections 6068, subdivision (a), 6125, and 6126, based on his appearing in court after the effective date of his inactive involuntary enrollment, the court will not find respondent culpable under section 6103, as such finding would be “redundant.” (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319.) Little, if any, purpose is served by duplicative allegations of misconduct. (*Bates v. State Bar* (1990) 51 Cal.3d 1056,1060.) Because respondent has been found culpable of violating sections 6068, subdivision (a), 6125, and 6126, based on his appearance as the attorney of record for the Hernandez defendants in Judge Fry’s court after the effective date of his involuntary inactive enrollment, the court rejects a separate finding of culpability under section 6103. Therefore, this count is dismissed with prejudice.

***Count 3 – Failure to Cooperate with the State Bar (Bus. & Prof. Code §6068, Subd. (i))***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a written response to the allegations in the Fry complaint or otherwise cooperating with the State Bar in its investigation, respondent failed to cooperate in a disciplinary investigation in wilful violation of

section 6068, subdivision (i).

**D. The Garza Matter (Case No. 05-O-03107)**

On February 3, 2005, Roland Garza (Garza) retained respondent to defend him in two criminal cases, pending in the Indio Court Branch of the Superior Court of California, County of Riverside.

From May 28, 2005, through June 20, 2005, respondent remained Garza's attorney of record in two criminal cases pending in Riverside County. In mid-June 2005, Garza paid respondent attorney fees to continue the representation.

On June 20, 2005, at respondent's direction, Garza appeared in court without respondent and sought a continuance of the two criminal cases. Respondent had not informed Garza that he was not entitled to practice law.

On June 22, 2005, the State Bar opened an investigation, pursuant to a complaint filed by the District Attorney of Riverside County regarding respondent's representation of Garza while he was not entitled to practice law (the Garza complaint). The State Bar wrote to respondent regarding the Garza complaint, requesting that respondent reply in writing to specified allegations of misconduct in the Garza complaint which were being investigated by the State Bar.

On July 25, 2005, after receiving the State Bar's letter, respondent telephoned the State Bar, stating that he would submit a written response by August 8, 2005. Respondent, however, never provided a written response, nor did he otherwise communicate with the State Bar regarding the allegations in the Garza complaint.

***Count 4 – Unauthorized Practice of Law (Bus. & Prof. Code, §§6068, Subd.(a), 6125, and 6126)***

Respondent knew that he was enrolled as an inactive member under section 6007, effective since May 28, 2005, and knew or should have known that he was not entitled to practice law, and could not hold himself out as entitled to practice law when he was enrolled inactive. Yet, he held himself out as entitled to practice law (1) when he was the attorney of record for Garza from May 28, 2005, through June 20, 2005, and (2) when he accepted payment of attorney fees from Garza in mid-June 2005, without informing Garza that he was not entitled to practice law. Furthermore, by advising Garza to appear in court on June 20, 2005, and to request a continuance in two criminal

matters, respondent actually practiced law when he was not entitled to do so.

Thus, by clear and convincing evidence respondent wilfully violated sections 6068, subdivision (a), 6125, and 6126 when he knew or should have known that he was not entitled to practice law, held himself out as entitled to practice law, and actually practiced law.

***Count 5 – Illegal Fee (Rules of Prof. Conduct, Rule 4-200(A))<sup>3</sup>***

Rule 4-200(A) prohibits an attorney from entering into an illegal or unconscionable fee agreement or charging or collecting an illegal or unconscionable fee.

While respondent was enrolled as an inactive member, he was legally precluded from practicing law and therefore, his performance of legal services in exchange for a fee was illegal. Respondent was not entitled to charge or collect fees for those services that constituted the unauthorized practice of law. (*Birbrower, Montalbana, Condon and Frank v. Superior Court*(1998) 17 Cal.4th 119, 136.)

Thus, by charging and collecting attorney fees from Garza in mid-June 2005, for his continued representation of Garza, respondent charged and collected an illegal fee in wilful violation of rule 4-200(A).

***Count 6 – Failure to Obey a Court Order (Bus. & Prof. Code, §6103)***

The uncontroverted evidence, as set forth in the NDC, establishes that respondent remained Garza’s attorney of record after the effective date of his involuntary inactive enrollment in violation of the State Bar Court’s May 25, 2005 order. However, as explained in the discussion regarding Count 2, *ante*, where an attorney has been found culpable of violating those statutes prohibiting the unauthorized practice of law, i.e., sections 6068, subdivision (a), 6125, and 6126, a charge of violating section 6103 is redundant; thus, the court will not find respondent culpable under section 6103. (*In the Matter of Heiner, supra*, 1 Cal. State Bar Ct. Rptr. 301, 319; see also, *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.) Accordingly, this count is dismissed with prejudice.

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<sup>3</sup>Unless otherwise indicated all further references to rule refer to the Rules of Professional Conduct of the State Bar of California.

***Count 7 – Failure to Cooperate with the State Bar (Bus. & Prof. Code §6068, Subd. (i))***

By not providing a written response to the allegations regarding the Garza complaint or otherwise cooperating in the State Bar’s investigation of the Garza complaint, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 60668, subdivision (i).

**E. The Maduena Matter (Case No. 05-O-03181)**

On May 31, 2005, respondent appeared as the attorney of record on behalf of an alleged juvenile offender, Joel Guadalupe Maduena (Maduena), before Judge Randall White (Judge White) in the Superior Court of California, County of Riverside.

On June 20, 2005, the State Bar opened an investigation pursuant to a complaint filed by Judge White against respondent (the White complaint). On July 11, 2005, the State Bar wrote to respondent, requesting that he reply in writing to specified allegations of misconduct in the White complaint that were being investigated by the State Bar. On July 25, 2005, after receiving the State Bar’s letter, respondent telephoned the State Bar, stating that he would submit a written response by August 8, 2005. However, respondent never provided a written response, nor did he otherwise communicate with the State Bar regarding the allegations in the White complaint.

***Count 8 – Unauthorized Practice of Law (Bus. & Prof. Code §§6068, Subd. (a), 6125, and 6126)***

By clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125, and 6126. Respondent knew or should have known that he was not entitled to hold himself out as practicing law or to practice law when he was enrolled inactive, effective since May 28, 2005. Yet, he held himself out as entitled to practice law by appearing as the attorney of record for Maduena in the Superior Court of California, County of Riverside on May 31, 2005.

***Count 9 – Failure to Obey a Court Order (Bus. & Prof. Code §6103)***

The evidence, as set forth in the NDC, establishes that respondent practiced law and held himself out as entitled to practice law by appearing as the attorney of record for Maduena in the Superior Court of California, County of Riverside on May 31, 2005. Where an attorney has been found culpable of violating those statutes prohibiting the unauthorized practice of law, i.e., sections 6068, subdivision (a), 6125, and 6126, a charge of violating section 6103 is redundant. Thus, the court will not find respondent culpable under section 6103. (*In the Matter of Heiner, supra*, 1 Cal.

State Bar Ct. Rptr. 301, 319; see also, *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. 229, 237.) Accordingly, this count is dismissed with prejudice.

***Count 10 – Failure to Cooperate with the State Bar (Bus. & Prof. Code, §6068, Subd. (i))***

By not providing a written response to the allegations regarding the White complaint or otherwise cooperating with the State Bar in its investigation, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 6068, subdivision (i).

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e).)<sup>4</sup>

**B. Aggravation**

There are several aggravating factors. (Standard 1.2(b).)

Respondent has four prior records of discipline. (Standard 1.2 (b)(i).)

1. Respondent stipulated to a one-year stayed suspension, two-year probation, and 30-day actual suspension for a criminal conviction referral in State Bar Court case No. 93-C-17740. Discipline was imposed based on respondent's conviction for a violation of Penal Code section 148.9(a) (giving false information to a police officer), and Vehicle Code sections 23152(b) (driving with .08% or more blood alcohol level) and 12500(a) (driving without a valid license). (Supreme Court case No. S045302, effective May 16, 1995.)
2. Respondent was suspended for one year, stayed, and placed on probation for three years with conditions, including an actual suspension of 90 days for failing to comply with conditions of his probation in Supreme Court case No. S045302. (Supreme Court case No. S045302, effective April 25, 1998; State Bar Court case No. 95-PM-17584.)
3. Respondent stipulated to a one-year stayed suspension, two-year probation, and 120-

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<sup>4</sup>All further references to standards are to this source.



day actual suspension for his failure to comply with certain probation conditions imposed in Supreme Court case No. S045302, effective April 25, 1998. (Supreme Court case No. S086529, effective April 13, 2001; State Bar Court case No. 99-O-12242.)

4. In State Bar Court case No. 04-O-11877, the Hearing Department of the State Bar Court recommended, among other things, that respondent be suspended for five years, stayed, and be actually suspended for three years. Respondent's culpability resulted from his failing to promptly respond to a client's reasonable status inquiries, failing to promptly pay funds as requested by a client that the client was entitled to receive, and failing to participate in a disciplinary investigation. The case is currently pending in the Review Department of the State Bar Court.

Respondent committed multiple acts of wrongdoing, including engaging in the unauthorized practice of law in three client matters between May and June 2005, charging and collecting an illegal fee, and failing to cooperate with the State Bar in three separate matters. (Standard 1.2(b)(ii).)

Respondent's misconduct was surrounded by "dishonesty" and/or "concealment." Respondent concealed from his clients and the Superior Court of California, Riverside County, the fact that he was not entitled to practice law when he held himself out as entitled to practice law, and in fact did practice law, between May and the end of June 2005. Additionally, by charging Garza attorney fees and collecting attorney fees from Garza in mid-June 2005, when respondent knew he was not entitled to practice law, respondent engaged in a dishonest act. (Standard 1.2(b)(iii).)

Respondent significantly harmed the administration of justice by holding himself out as entitled to practice law, making court appearances, and collecting fees from and advising clients when he was not entitled to practice law. (Standard 1.2(b)(iv).)

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## **V. Discussion**

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible

professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

The standards for respondent's misconduct provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. The applicable standards in this matter are standards 1.6, 1.7(b), and 2.6. While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. Here, respondent has four prior records of discipline.

The State Bar urges disbarment citing *Farnham v. State Bar* (1976) 17 Cal.3d 605 and *Morgan v. State Bar* (1990) 51 Cal.3d 598 in support of its recommendation.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, the attorney abandoned two clients and engaged in the unauthorized practice of law while under actual suspension. The attorney had only one prior record of discipline, and participated in the disciplinary proceedings at issue. As a result, he was suspended for six months with a stayed suspension of two years upon conditions of probation. Unlike the attorney in *Farnham*, respondent has failed to participate in these disciplinary proceedings,<sup>5</sup> and he also has a more significant history of discipline.

In *Morgan v. State Bar* (1990) 51 Cal.3d 598, the attorney, who engaged in the unauthorized practice of law while under suspension and entered into an unfair credit transaction with the client, was disbarred. The Supreme Court in determining the appropriate discipline, noted that the attorney had been found culpable in four disciplinary proceedings. The Court cited standard 1.7(b) as requiring disbarment in the absence of the most compelling mitigating circumstances. (*Id.* at 607.) Unlike respondent, the *Morgan* attorney participated in the disciplinary proceedings.

In this matter, the gravamen of respondent's misconduct is his unauthorized practice of law

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<sup>5</sup>As noted in the findings of fact, respondent received the State Bar's letters regarding its investigations of the Garza and the Maduena matters. However, despite having agreed to provide written responses to specified allegations of misconduct in those matters, respondent did not do so, nor did he otherwise participate in the disciplinary investigations or proceedings.

while he was enrolled inactive. By his misconduct, respondent has shown an utter disregard for his clients, the public, the courts, and the legal profession. He has shown an inability or unwillingness to uphold his professional obligations and conform his conduct to the ethical strictures of the legal profession.

In addition, the court is unaware of any facts or circumstances that would justify a departure from the standards. One of the State Bar Court's obligations is to ensure that its disciplinary recommendations to the Supreme Court are fair and consistent. (*In re Young* (1989) 49 Cal.3d 257, 268.)

Moreover, respondent's acts of concealment and dishonesty, as well as his default, weigh heavily in assessing the appropriate level of discipline. In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Respondent is not entitled to be recommended to the public as a person worthy of trust. Therefore, based on respondent's misconduct, the aggravating circumstances and the lack of mitigating factors, the court recommends disbarment.

## **VI. Recommended Discipline**

Accordingly, the court recommends that **Darnel A. Parker** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days respectively, of the effective date of its order imposing discipline in this matter.

## **VII. Costs**

The court recommends that costs be awarded to the State Bar in accordance with section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

### **VIII. Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status. (Section 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after service of this order.

Dated: April 24, 2006

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ROBERT M. TALCOTT  
Judge of the State Bar Court